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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY DWAIN GODFREY,

Defendant and Appellant.

D053870

(Super. Ct. No. SCD199992)

APPEAL from a judgment of the Superior Court of San Diego County, William H. Kronberger, Jr., Judge. Affirmed as modified with directions.

In 2006 Gregory Dwaine Godfrey entered a negotiated guilty plea to assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1))<sup>1</sup> and admitted a prior serious felony conviction (§ 667, subd. (a)). The court suspended imposition of sentence, placed him on three years' probation, imposed a \$200 restitution fine (§ 1202.4, subd. (b)) and imposed and stayed a \$200 probation revocation fine (§ 1202.44). In 2007 the court revoked probation, suspended execution of a nine-year

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<sup>1</sup> All further statutory references are to the Penal Code.

prison sentence (the four-year upper term for assault and five years for the serious felony prior) and reinstated probation. In 2008 the court revoked probation, executed the prison sentence, imposed a \$1000 restitution fine (§ 1202.4, subd. (b)) and imposed and suspended a \$1000 parole revocation fine (§ 1202.45).

Godfrey appeals, contending the court erred by imposing the \$1000 restitution and parole revocation fines because it originally imposed \$200 fines. The People properly concede that the court was not authorized to impose the \$1000 restitution fine because the initial \$200 fine remained in force (*People v. Chambers* (1998) 65 Cal.App.4th 819, 821-823; *People v. Downey* (2000) 82 Cal.App.4th 899, 921-922; *People v. Johnson* (2003) 114 Cal.App.4th 284, 306-308) and the parole revocation fine must also be reduced to \$200 (§ 1202.45; *Johnson*, at pp. 306-308). We accordingly modify the judgment to reflect \$200 restitution and parole revocation fines in place of the higher fines.

Additionally, the People correctly note that the judgment must be modified to reflect the mandatory \$200 probation revocation fine (§ 1202.44). (*People v. Guiffre* (2008) 167 Cal.App.4th 430.) At the 2008 sentencing hearing, the court stated, "the fine previously stayed per [section] 12022.44 be imposed in the amount of [\$]200, forthwith." Although the court may have meant section 1202.44, the abstract of judgment does not reflect that it lifted the 2006 stay on the \$200 probation revocation fine. The abstract must be corrected accordingly.

#### DISPOSITION

The judgment is modified to reflect a \$200 restitution fine (§ 1202.4, subd. (b)) and a \$200 parole revocation fine (§ 1202.45) in place of the \$1000 fines and to reflect

that the \$200 probation revocation fine (§ 1202.44) is now due. The trial court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

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BENKE, Acting P. J.

WE CONCUR:

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NARES, J.

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IRION, J.